

HOUSE BILL 1145

E1
HB 1261/09 – JUD

0lr3030

By: **Delegates Mathias, Cane, Conway, Elmore, ~~and Rudolph~~ Rudolph, Haddaway, and Eckardt**

Introduced and read first time: February 17, 2010

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 21, 2010

CHAPTER _____

1 AN ACT concerning

2 **Criminal Law – Salvinorin A and Salvia Divinorum – Distribution to and**
3 **Possession by Individual Under 21 Years of Age**

4 FOR the purpose of prohibiting a person from distributing Salvia divinorum to an
5 individual under the age of 21 years; providing that it is a defense in a certain
6 prosecution that the defendant examined a certain license or identification that
7 positively identified a certain purchaser or recipient as at least a certain age;
8 establishing penalties for a certain violation of this Act; providing that certain
9 separate incidents are separate violations for a certain purpose; prohibiting an
10 individual under the age of 21 years from possessing Salvia divinorum;
11 establishing that a person who violates this Act shall be issued a certain
12 citation; authorizing certain individuals to issue certain citations under certain
13 circumstances; requiring the District Court to prescribe a certain form of
14 citation; requiring the jurisdiction that issues a certain citation to forward a
15 copy of the citation and a request for trial to the District Court having a certain
16 venue; requiring the District Court to schedule a certain trial and summon a
17 certain defendant to appear; providing that a willful failure to respond to a
18 certain summons is contempt of court; establishing that a violation of a certain
19 provision of this Act is a Code violation and a civil offense; providing that a
20 minor is subject to certain procedures and dispositions; providing that an
21 individual who is under the age of 21 years but not a minor is subject to certain
22 provisions of this Act; establishing that an adjudication of a certain Code
23 violation is not a criminal conviction for any purpose and does not impose
24 certain disabilities; establishing certain procedures for a certain Code violation

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 proceeding; establishing certain penalties for a certain violation of this Act;
 2 prohibiting the Chief Judge of the District Court from establishing a certain
 3 schedule for the prepayment of fines; authorizing a court to direct the payment
 4 of a certain fine be suspended or deferred; establishing that the willful failure to
 5 pay a certain fine is criminal contempt of court; providing that a certain
 6 defendant is liable for certain costs; establishing that a certain defendant has
 7 certain rights to appeal or file certain motions; authorizing the State's Attorney
 8 to prosecute a certain violation in a certain manner; authorizing a certain
 9 intake officer to refer a certain child to a substance abuse education or
 10 rehabilitation program under certain circumstances; requiring a certain intake
 11 officer to forward a certain citation to the State's Attorney if a certain child fails
 12 to comply with a substance abuse education or rehabilitation program referral;
 13 establishing that a violation of a certain provision of this Act is a violation for
 14 certain purposes; authorizing a certain law enforcement officer to issue a
 15 citation to a child for a violation of a certain provision of this Act under certain
 16 circumstances; providing for the application of this Act; providing that this Act
 17 does not preempt certain local or municipal laws; defining a certain term;
 18 making conforming changes; and generally relating to *Salvia divinorum*.

19 BY adding to
 20 Article – Criminal Law
 21 Section 10–130 through 10–133 to be under the new part “Part IV. *Salvia*
 22 *Divinorum*”
 23 Annotated Code of Maryland
 24 (2002 Volume and 2009 Supplement)

25 BY repealing and reenacting, with amendments,
 26 Article – Courts and Judicial Proceedings
 27 Section 3–8A–01(dd), 3–8A–10(k), and 3–8A–33(a)
 28 Annotated Code of Maryland
 29 (2006 Replacement Volume and 2009 Supplement)

30 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 31 MARYLAND, That the Laws of Maryland read as follows:

32 **Article – Criminal Law**

33 **10–128. RESERVED.**

34 **10–129. RESERVED.**

35 **PART IV. SALVIA DIVINORUM.**

36 **10–130.**

1 (A) IN THIS PART, "SALVIA DIVINORUM" INCLUDES SALVINORIN A AND
2 ANY MATERIAL, COMPOUND, MIXTURE, PREPARATION, OR PRODUCT THAT
3 CONTAINS SALVIA DIVINORUM OR SALVINORIN A.

4 (B) NOTHING IN THIS PART SHALL PROHIBIT AN ACCREDITED
5 ACADEMIC OR MEDICAL INSTITUTION OR RESEARCH FACILITY FROM
6 CONDUCTING RESEARCH ON SALVIA DIVINORUM OR SALVINORIN A OR A
7 DERIVATIVE OF SALVIA DIVINORUM OR SALVINORIN A.

8 (C) THIS PART DOES NOT PREEMPT ANY LOCAL OR MUNICIPAL LAW
9 CURRENTLY REGULATING THE USE, POSSESSION, OR DISTRIBUTION OF SALVIA
10 DIVINORUM OR SALVINORIN A.

11 **10-131.**

12 (A) A PERSON MAY NOT DISTRIBUTE SALVIA DIVINORUM TO AN
13 INDIVIDUAL UNDER THE AGE OF 21 YEARS.

14 (B) IN A PROSECUTION FOR A VIOLATION OF THIS SECTION, IT IS A
15 DEFENSE THAT THE DEFENDANT EXAMINED THE PURCHASER'S OR RECIPIENT'S
16 DRIVER'S LICENSE OR OTHER VALID IDENTIFICATION ISSUED BY AN EMPLOYER,
17 A GOVERNMENT UNIT, OR AN INSTITUTION OF HIGHER EDUCATION THAT
18 POSITIVELY IDENTIFIED THE PURCHASER OR RECIPIENT AS AT LEAST 21 YEARS
19 OF AGE.

20 (C) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A
21 MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING:

22 (1) \$300 FOR A FIRST VIOLATION;

23 (2) \$1,000 FOR A SECOND VIOLATION OCCURRING WITHIN 2
24 YEARS AFTER THE FIRST VIOLATION; AND

25 (3) \$3,000 FOR EACH SUBSEQUENT VIOLATION OCCURRING
26 WITHIN 2 YEARS AFTER THE PRECEDING VIOLATION.

27 (D) FOR PURPOSES OF THIS SECTION, EACH SEPARATE INCIDENT AT A
28 DIFFERENT TIME AND OCCASION IS A SEPARATE VIOLATION.

29 **10-132.**

30 AN INDIVIDUAL UNDER THE AGE OF 21 YEARS MAY NOT POSSESS SALVIA
31 DIVINORUM.

32 **10-133.**

1 **(A) A PERSON WHO VIOLATES § 10-132 OF THIS PART SHALL BE ISSUED**
2 **A CITATION UNDER THIS SECTION.**

3 **(B) A CITATION FOR A VIOLATION OF § 10-132 OF THIS PART MAY BE**
4 **ISSUED BY:**

5 **(1) A POLICE OFFICER AUTHORIZED TO MAKE ARRESTS; AND**

6 **(2) IN STATE FORESTRY RESERVATIONS, STATE PARKS, HISTORIC**
7 **MONUMENTS, AND RECREATION AREAS, A FOREST OR PARK WARDEN UNDER §**
8 **5-206(A) OF THE NATURAL RESOURCES ARTICLE.**

9 **(C) A PERSON AUTHORIZED UNDER THIS SECTION TO ISSUE A CITATION**
10 **SHALL ISSUE IT IF THE PERSON HAS PROBABLE CAUSE TO BELIEVE THAT THE**
11 **PERSON CHARGED IS COMMITTING OR HAS COMMITTED A VIOLATION OF §**
12 **10-132 OF THIS PART.**

13 **(D) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE FORM**
14 **OF CITATION ISSUED TO AN ADULT FOR A VIOLATION OF § 10-132 OF THIS PART**
15 **SHALL BE AS PRESCRIBED BY THE DISTRICT COURT AND SHALL BE UNIFORM**
16 **THROUGHOUT THE STATE.**

17 **(2) THE CITATION ISSUED TO AN ADULT SHALL CONTAIN:**

18 **(I) THE NAME AND ADDRESS OF THE PERSON CHARGED;**

19 **(II) THE STATUTE ALLEGEDLY VIOLATED;**

20 **(III) THE LOCATION, DATE, AND TIME THAT THE VIOLATION**
21 **OCCURRED;**

22 **(IV) THE FINE THAT MAY BE IMPOSED;**

23 **(V) A NOTICE STATING THAT PREPAYMENT OF THE FINE IS**
24 **NOT ALLOWED;**

25 **(VI) A NOTICE THAT THE DISTRICT COURT SHALL**
26 **PROMPTLY SEND TO THE PERSON CHARGED A SUMMONS TO APPEAR FOR TRIAL;**

27 **(VII) THE SIGNATURE OF THE PERSON ISSUING THE**
28 **CITATION; AND**

29 **(VIII) A SPACE FOR THE PERSON CHARGED TO SIGN THE**
30 **CITATION.**

1 **(3) THE FORM OF CITATION ISSUED TO A MINOR SHALL:**

2 **(I) BE PRESCRIBED BY THE STATE COURT**
3 **ADMINISTRATOR;**

4 **(II) BE UNIFORM THROUGHOUT THE STATE; AND**

5 **(III) CONTAIN THE INFORMATION LISTED IN § 3-8A-33(B) OF**
6 **THE COURTS ARTICLE.**

7 **(E) (1) THE ISSUING JURISDICTION SHALL FORWARD A COPY OF THE**
8 **CITATION AND A REQUEST FOR TRIAL TO THE DISTRICT COURT IN THE**
9 **DISTRICT HAVING VENUE.**

10 **(2) THE DISTRICT COURT SHALL PROMPTLY SCHEDULE THE**
11 **CASE FOR TRIAL AND SUMMON THE DEFENDANT TO APPEAR.**

12 **(3) WILLFUL FAILURE OF THE DEFENDANT TO RESPOND TO A**
13 **SUMMONS DESCRIBED IN PARAGRAPH (2) OF THIS SUBSECTION IS CONTEMPT**
14 **OF COURT.**

15 **(F) (1) FOR PURPOSES OF THIS SECTION, A VIOLATION OF § 10-132**
16 **OF THIS PART IS A CODE VIOLATION AND IS A CIVIL OFFENSE.**

17 **(2) A PERSON CHARGED WHO IS UNDER THE AGE OF 18 YEARS**
18 **SHALL BE SUBJECT TO THE PROCEDURES AND DISPOSITIONS PROVIDED IN**
19 **TITLE 3, SUBTITLE 8A OF THE COURTS ARTICLE.**

20 **(3) A PERSON CHARGED WHO IS AT LEAST 18 YEARS OLD SHALL**
21 **BE SUBJECT TO THE PROVISIONS OF THIS SECTION.**

22 **(4) ADJUDICATION OF A CODE VIOLATION UNDER § 10-132 OF**
23 **THIS PART IS NOT A CRIMINAL CONVICTION FOR ANY PURPOSE AND DOES NOT**
24 **IMPOSE ANY OF THE CIVIL DISABILITIES ORDINARILY IMPOSED BY A CRIMINAL**
25 **CONVICTION.**

26 **(G) IN ANY PROCEEDING FOR A CODE VIOLATION UNDER § 10-132 OF**
27 **THIS PART:**

28 **(1) THE STATE HAS THE BURDEN TO PROVE THE GUILT OF THE**
29 **DEFENDANT TO THE SAME EXTENT AS IS REQUIRED BY LAW IN THE TRIAL OF**
30 **CRIMINAL CAUSES;**

1 **(2) THE COURT SHALL APPLY THE EVIDENTIARY STANDARDS AS**
2 **PRESCRIBED BY LAW OR RULE FOR THE TRIAL OF CRIMINAL CAUSES;**

3 **(3) THE COURT SHALL ENSURE THAT THE DEFENDANT HAS**
4 **RECEIVED A COPY OF THE CHARGES AGAINST THE DEFENDANT AND THAT THE**
5 **DEFENDANT UNDERSTANDS THOSE CHARGES;**

6 **(4) THE DEFENDANT IS ENTITLED TO CROSS-EXAMINE ALL**
7 **WITNESSES WHO APPEAR AGAINST THE DEFENDANT, TO PRODUCE EVIDENCE OR**
8 **WITNESSES ON BEHALF OF THE DEFENDANT, OR TO TESTIFY ON THE**
9 **DEFENDANT'S OWN BEHALF, IF THE DEFENDANT CHOOSES TO DO SO;**

10 **(5) THE DEFENDANT IS ENTITLED TO BE REPRESENTED BY**
11 **COUNSEL OF THE DEFENDANT'S CHOICE AND AT THE EXPENSE OF THE**
12 **DEFENDANT; AND**

13 **(6) THE DEFENDANT MAY ENTER A PLEA OF GUILTY OR NOT**
14 **GUILTY, AND THE VERDICT OF THE COURT IN THE CASE SHALL BE:**

15 **(I) GUILTY OF A CODE VIOLATION;**

16 **(II) NOT GUILTY OF A CODE VIOLATION; OR**

17 **(III) PROBATION BEFORE JUDGMENT, IMPOSED BY THE**
18 **COURT IN THE SAME MANNER AND TO THE SAME EXTENT AS IS ALLOWED BY LAW**
19 **IN THE TRIAL OF A CRIMINAL CASE.**

20 **(H) (1) IF THE DISTRICT COURT FINDS THAT A PERSON HAS**
21 **COMMITTED A CODE VIOLATION, THE COURT SHALL REQUIRE THE PERSON TO**
22 **PAY:**

23 **(I) FOR A FIRST VIOLATION, A FINE NOT EXCEEDING \$500;**
24 **OR**

25 **(II) FOR A SECOND OR SUBSEQUENT VIOLATION, A FINE NOT**
26 **EXCEEDING \$1,000.**

27 **(2) THE CHIEF JUDGE OF THE DISTRICT COURT MAY NOT**
28 **ESTABLISH A SCHEDULE FOR THE PREPAYMENT OF FINES FOR A VIOLATION**
29 **UNDER § 10-132 OF THIS PART.**

30 **(I) WHEN A DEFENDANT HAS BEEN FOUND GUILTY OF A CODE**
31 **VIOLATION AND A FINE HAS BEEN IMPOSED BY THE COURT:**

32 **(1) THE COURT MAY DIRECT THAT THE PAYMENT OF THE FINE BE**

1 SUSPENDED OR DEFERRED UNDER CONDITIONS THAT THE COURT MAY
2 ESTABLISH; AND

3 (2) IF THE DEFENDANT WILLFULLY FAILS TO PAY THE FINE
4 IMPOSED BY THE COURT, THAT WILLFUL FAILURE MAY BE TREATED AS A
5 CRIMINAL CONTEMPT OF COURT, FOR WHICH THE DEFENDANT MAY BE
6 PUNISHED BY THE COURT AS PROVIDED BY LAW.

7 (J) (1) THE DEFENDANT IS LIABLE FOR THE COSTS OF THE
8 PROCEEDINGS IN THE DISTRICT COURT AND FOR PAYMENT TO THE CRIMINAL
9 INJURIES COMPENSATION FUND.

10 (2) THE COURT COSTS IN A CODE VIOLATION CASE UNDER §
11 10-132 OF THIS PART IN WHICH COSTS ARE IMPOSED ARE \$5.

12 (K) (1) A DEFENDANT WHO HAS BEEN FOUND GUILTY OF A CODE
13 VIOLATION UNDER § 10-132 OF THIS PART HAS THE RIGHT TO APPEAL OR TO
14 FILE A MOTION FOR A NEW TRIAL OR A MOTION FOR A REVISION OF A
15 JUDGMENT PROVIDED BY LAW IN THE TRIAL OF A CRIMINAL CASE.

16 (2) A MOTION SHALL BE MADE IN THE SAME MANNER AS
17 PROVIDED IN THE TRIAL OF CRIMINAL CASES, AND THE COURT, IN RULING ON
18 THE MOTION, HAS THE SAME AUTHORITY PROVIDED IN THE TRIAL OF CRIMINAL
19 CASES.

20 (L) (1) THE STATE'S ATTORNEY FOR ANY COUNTY MAY PROSECUTE A
21 CODE VIOLATION UNDER § 10-132 OF THIS PART IN THE SAME MANNER AS
22 PROSECUTION OF A VIOLATION OF THE CRIMINAL LAWS OF THE STATE.

23 (2) IN A CODE VIOLATION CASE UNDER § 10-132 OF THIS PART,
24 THE STATE'S ATTORNEY MAY:

25 (I) ENTER A NOLLE PROSEQUI IN OR PLACE THE CASE ON
26 THE STET DOCKET; AND

27 (II) EXERCISE AUTHORITY IN THE SAME MANNER AS
28 PRESCRIBED BY LAW FOR VIOLATION OF THE CRIMINAL LAWS OF THE STATE.

29 Article – Courts and Judicial Proceedings

30 3-8A-01.

31 (dd) "Violation" means a violation for which a citation is issued under:

1 (1) § 10–113, § 10–114, § 10–115, or § 10–116 of the Criminal Law
2 Article;

3 (2) § 10–108 of the Criminal Law Article; [or]

4 **(3) § 10–132 OF THE CRIMINAL LAW ARTICLE; OR**

5 **[(3) (4) § 26–103 of the Education Article.**

6 3–8A–10.

7 (k) (1) If the intake officer receives a citation other than a citation
8 authorized under § 10–108 of the Criminal Law Article, the intake officer may:

9 (i) Refer the child to an alcohol **OR SUBSTANCE ABUSE**
10 education or rehabilitation program;

11 (ii) Assign the child to a supervised work program for not more
12 than 20 hours for the first violation and not more than 40 hours for the second or
13 subsequent violation;

14 (iii) Require the parent or guardian of the child to withdraw the
15 parent's or guardian's consent to the child's license to drive, and advise the Motor
16 Vehicle Administration of the withdrawal of consent; or

17 (iv) Forward the citation to the State's Attorney.

18 (2) The intake officer shall forward the citation, other than a citation
19 authorized under § 10–108 of the Criminal Law Article, to the State's Attorney if:

20 (i) The parent or guardian of the child refuses to withdraw
21 consent to the child's license to drive;

22 (ii) The child fails to comply with an alcohol **OR SUBSTANCE**
23 **ABUSE** education or rehabilitation program referral; or

24 (iii) The child fails to comply with a supervised work program
25 assignment.

26 3–8A–33.

27 (a) A law enforcement officer authorized to make arrests shall issue a
28 citation to a child if the officer has probable cause to believe that the child is violating:

29 (1) § 10–113, § 10–114, § 10–115, or § 10–116 of the Criminal Law
30 Article;

1 (2) § 10–108 of the Criminal Law Article; [or]

2 **(3) § 10–132 OF THE CRIMINAL LAW ARTICLE; OR**

3 **[(3)] (4) § 26–103 of the Education Article.**

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 June 1, 2010.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.